

Assembly Bill No. 2171

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

Passed the Senate August 26, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Article 2.5 (commencing with Section 1569.261) to Chapter 3.2 of Division 2 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2171, Wieckowski. Residential care facilities for the elderly.

Existing law, the Residential Care Facilities for the Elderly Act, provides for the licensure and regulation of residential care facilities for the elderly by the State Department of Social Services. A violation of these provisions is a misdemeanor.

This bill would establish specified rights for residents of privately operated residential care facilities for the elderly, including, among other things, to be accorded dignity in their personal relationships with staff, to be granted a reasonable level of personal privacy of accommodations, medical treatment, personal care and assistance, and to confidential treatment of their records and personal information, as specified. The bill would require, at admission, a facility staff person to personally advise a resident and the resident's representative, as described, of these and other specified rights and to provide them with a written copy of these rights.

By expanding the scope of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Article 2.5 (commencing with Section 1569.261) is added to Chapter 3.2 of Division 2 of the Health and Safety Code, to read:

Article 2.5. Resident's Bill of Rights

1569.261. (a) It is the intent of the Legislature in enacting this article to adopt fundamental rights for all persons residing in a residential care facility for the elderly, as defined in Section 1569.2, and to ensure that facilities respect and promote these rights.

(b) In establishing this bill of rights, the Legislature intends that persons residing in residential care facilities for the elderly be treated with dignity, kindness, and respect, and that their civil liberties be fully honored.

(c) A central purpose of the bill of rights is to strengthen a resident's right to make choices about his or her care, treatment, and daily life in the facility and to ensure that the resident's choices are respected. The Legislature intends to enhance each resident's autonomy and ability to make decisions concerning his or her life.

(d) The Legislature also intends that each residential care facility for the elderly provide a safe, comfortable, and homelike environment for its residents and that it protect residents from physical or mental abuse, neglect, exploitation, or endangerment.

1569.265. (a) Rights and liberties set forth in this article do not diminish a resident's constitutional rights or any other rights set forth in other state or federal laws and regulations. Persons residing in residential care facilities for the elderly shall continue to enjoy all of their civil and legal rights.

(b) The provisions of this article apply only to privately operated residential care facilities for the elderly.

1569.267. (a) At admission, a facility staff person shall personally advise a resident and the resident's representative of, and give a complete written copy of, the rights in this article and the personal rights in Section 87468 of Title 22 of the California Code of Regulations. The licensee shall have each resident and the resident's representative sign and date a copy of the resident's rights, and the licensee shall include the signed and dated copy in the resident's record.

(b) Licensees shall prominently post, in areas accessible to the residents and their representatives, a copy of the residents' rights.

(c) The rights posted pursuant to subdivision (b) shall be posted both in English and in any other language in a facility in which 5 percent or more of the residents can only read that other language.

(d) The licensee shall provide initial and ongoing training for all members of its staff to ensure that residents' rights are fully respected and implemented.

1569.269. (a) Residents of residential care facilities for the elderly shall have all of the following rights:

(1) To be accorded dignity in their personal relationships with staff, residents, and other persons.

(2) To be granted a reasonable level of personal privacy in accommodations, medical treatment, personal care and assistance, visits, communications, telephone conversations, use of the Internet, and meetings of resident and family groups.

(3) To confidential treatment of their records and personal information and to approve their release, except as authorized by law.

(4) To be encouraged and assisted in exercising their rights as citizens and as residents of the facility. Residents shall be free from interference, coercion, discrimination, and retaliation in exercising their rights.

(5) To be accorded safe, healthful, and comfortable accommodations, furnishings, and equipment.

(6) To care, supervision, and services that meet their individual needs and are delivered by staff that are sufficient in numbers, qualifications, and competency to meet their needs.

(7) To be served food of the quality and in the quantity necessary to meet their nutritional needs.

(8) To make choices concerning their daily life in the facility.

(9) To fully participate in planning their care, including the right to attend and participate in meetings or communications regarding the care and services to be provided in accordance with Section 1569.80, and to involve persons of their choice in the planning process. The licensee shall provide necessary information and support to ensure that residents direct the process to the maximum extent possible, and are enabled to make informed decisions and choices.

(10) To be free from neglect, financial exploitation, involuntary seclusion, punishment, humiliation, intimidation, and verbal, mental, physical, or sexual abuse.

(11) To present grievances and recommend changes in policies, procedures, and services to the staff of the facility, the facility's management and governing authority, and to any other person

without restraint, coercion, discrimination, reprisal, or other retaliatory actions. The licensee shall take prompt actions to respond to residents' grievances.

(12) To contact the State Department of Social Services, the long-term care ombudsman, or both, regarding grievances against the licensee. The licensee shall post the telephone numbers and addresses for the local offices of the State Department of Social Services and ombudsman program, in accordance with Section 9718 of the Welfare and Institutions Code, conspicuously in the facility foyer, lobby, residents' activity room, or other location easily accessible to residents.

(13) To be fully informed, as evidenced by the resident's written acknowledgement, prior to or at the time of admission, of all rules governing residents' conduct and responsibilities. In accordance with Section 1569.885, all rules established by a licensee shall be reasonable and shall not violate any rights set forth in this chapter or in other applicable laws or regulations.

(14) To receive in the admission agreement a comprehensive description of the method for evaluating residents' service needs and the fee schedule for the items and services provided, and to receive written notice of any rate increases pursuant to Sections 1569.655 and 1569.884.

(15) To be informed in writing at or before the time of admission of any resident retention limitations set by the state or licensee, including any limitations or restrictions on the licensee's ability to meet residents' needs.

(16) To reasonable accommodation of individual needs and preferences in all aspects of life in the facility, except when the health or safety of the individual or other residents would be endangered.

(17) To reasonable accommodation of resident preferences concerning room and roommate choices.

(18) To written notice of any room changes at least 30 days in advance unless the request for a change is agreed to by the resident, required to fill a vacant bed, or necessary due to an emergency.

(19) To share a room with the resident's spouse, domestic partner, or a person of resident's choice when both spouses, partners, or residents live in the same facility and consent to the arrangement.

(20) To select their own physicians, pharmacies, privately paid personal assistants, hospice agency, and health care providers, in a manner that is consistent with the resident's contract of admission or other rules of the facility, and in accordance with this act.

(21) To have prompt access to review all of their records and to purchase photocopies. Photocopied records shall be promptly provided, not to exceed two business days, at a cost not to exceed the community standard for photocopies.

(22) To be protected from involuntary transfers, discharges, and evictions in violation of state laws and regulations. Facilities shall not involuntarily transfer or evict residents for grounds other than those specifically enumerated under state law or regulations, and shall comply with enumerated eviction and relocation protections for residents. For purposes of this paragraph, "involuntary" means a transfer, discharge, or eviction that is initiated by the licensee, not by the resident.

(23) To move from a facility.

(24) To consent to have relatives and other individuals of the resident's choosing visit during reasonable hours, privately and without prior notice.

(25) To receive written information on the right to establish an advanced health care directive and, pursuant to Section 1569.156, the licensee's written policies on honoring those directives.

(26) To be encouraged to maintain and develop their fullest potential for independent living through participation in activities that are designed and implemented for this purpose, in accordance with Section 87219 of Title 22 of the California Code of Regulations.

(27) To organize and participate in a resident council that is established pursuant to Section 1569.157.

(28) To protection of their property from theft or loss in accordance with Sections 1569.152, 1569.153, and 1569.154.

(29) To manage their financial affairs. A licensee shall not require residents to deposit their personal funds with the licensee. Except as provided in approved continuing care agreements, a licensee, or a spouse, domestic partner, relative, or employee of a licensee, shall not do any of the following:

(A) Accept appointment as a guardian or conservator of the person or estate of a resident.

(B) Become or act as a representative payee for any payments made to a resident, without the written and documented consent of the resident or the resident's representative.

(C) Serve as an agent for a resident under any general or special power of attorney.

(D) Become or act as a joint tenant on any account with a resident.

(E) Enter into a loan or promissory agreement or otherwise borrow money from a resident without a notarized written agreement outlining the terms of the repayment being given to the resident.

(30) To keep, have access to, and use their own personal possessions, including toilet articles, and to keep and be allowed to spend their own money, unless limited by statute or regulation.

(b) A licensed residential care facility for the elderly shall not discriminate against a person seeking admission or a resident based on sex, race, color, religion, national origin, marital status, registered domestic partner status, ancestry, actual or perceived sexual orientation, or actual or perceived gender identity.

(c) No provision of a contract of admission, including all documents that a resident or his or her representative is required to sign as part of the contract for, or as a condition of, admission to a residential care facility for the elderly, shall require that a resident waive benefits or rights to which he or she is entitled under this chapter or provided by federal or other state law or regulation.

(d) Residents' family members, friends, and representatives have the right to organize and participate in a family council that is established pursuant to Section 1569.158.

(e) The rights specified in this section shall be in addition to any other rights provided by law.

(f) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of

the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2014

Governor